IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 20648 of 2007(G)

E.P.NO.2008/2004 IN OS.2021/2002 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

VARGHESE CHACKO.
S/O.KANNAKKADAN CHAKKUNNY,
KALPARAMBU DESOM,POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS:

DHARMAPRIYA ENTERPRISES (P) LTD.,
IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK,REPRESENTED BY MANAGING
DIRECTOR PRABHAKARAN,S/O.POYYARA KOCHURAMAN,
IRINJALAKUDA VILLAGE,MUKUNDAPURAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.20648 OF 2007

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Dated this the 5th day of July, 2007

JUDGMENT

This writ petition is filed challenging the issuance of arrest warrant against the 3rd judgment debtor. It is the case of the decree holder that the 3rd judgment debtor is having a monthly income of Rs.7,500/- from a shop, viz.,'Veenus Brothers' and he is refusing to pay the amount and so warrant may be issued against him. The decree holder as well as the 3rd judgment debtor were examined. Even in the counter statement the 3rd judgment debtor has made very clear that he is not conducting the shop and it is conducted by one Johnson, S/o.Antony. So there is a crystal clear specific denial. Unfortunately the learned Munsiff thought that there is only a prima facie responsibility for the decree holder to prove the means. It is incorrect in law. It is always easy to prove a positive rather than a negative. If the present 3rd judgment debtor is running a business there will be documents available with the Panchayat or the Municipality as the case may and he would be paying the profession tax as well and these documents will certainly clinch the issue of running a business. Instead of attempting to

produce it and prove it, the court has found fault with the judgment debtor for not producing the documents. Therefore the finding arrived at by the learned Munsiff is against the principles of law and it requires interference.

Therefore the order under challenge is set aside and the matter is remitted back to the Prl.Munsiff's Court, Irinjalakkuda for fresh consideration after affording an opportunity to both sides to adduce evidence in support of their contentions and dispose it of in accordance with law within a time frame of two months. The court shall give notice to the decree holder as he has not appeared before this court.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-